IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

***CRIMINAL APPEAL NO.270 SB OF 1995***

DATE OF DECISION: MARCH 9, 2007

Lakhwinder Singh and another

.....Appellants

VERSUS

State of Punjab

....Respondent

***CRIMINAL REVISION NO.518 OF 1995***

Surinder Singh

.....Petitioner

VERSUS

Lakhvinder Singh etc.

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mrs.Baljeet Mann, Advocate,
for the appellants.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

Mr. J.B.S.Gill, Advocate,
for the complainant.

****

RANJIT SINGH, J.

By this common order Criminal Appeal No.270 SB of 1995 (***Lakhwinder Singh etc. Vs. State of Punjab)*** and Criminal Revision No.518

of 1005 (***Surinder Singh Vs. Lakhvinder Singh etc.)*** are being disposed of.

Lakhwinder Singh and his wife, Jasbir Kaur, are in appeal against the order of their conviction for an offence under Sections 354, 366 IPC. Having found them guilty of the charges, the trial Court had sentenced appellant Lakhwinder to undergo RI for four years and to pay a fine of Rs.500/- whereas appellant Jasbir Kaur was released on probation after conviction.

The complainant has filed the Criminal Revision, seeking enhancement of sentence in respect of both the appellants.

Manjit Kaur, complainant, alleges that on 10.3.1994, she was abducted by appellant Jasbir Kaur and her sister-in-law, Balwinder Kaur, while she had gone to and was present at a shop in Bazar at Dasua. As per the case of prosecution, Balwinder Kaur came to the shop where Manjit Kaur was present. She asked Manjit Kaur to switch on the tape recorder. When she did so, Balwinder Kaur increased the volume thereof. Shortly, thereafter, appellant Jasbir Kaur reached there and they both started pulling Manjit Kaur towards their (appellants) house. The cause for doing so, as disclosed by Manjit Kaur, was that Gurbax Singh, brother of the complainant, used to tease Balwinder Kaur and to take revenge they had so acted. Manjit Kaur, complainant, raised alarm, attracting attention of Gurmit Kaur and Balwinder Singh. They both attempted to rescue the complainant but Jasbir Kaur and Balwinder Kaur threatened them. It is further alleged that the complainant was taken to a room inside the house where appellant, Lakhwinder Singh was present. As per the allegation, Balwinder Kaur and Jasbir Kaur had

locked the complainant inside the room where appellant, Lakhwinder Singh had removed her salwar and had given tooth bites on her cheek besides attempting to commit rape but without success. The complainant allegedly raised hue and cry, as a result of which number of persons gathered. Thereafter, Jasbir Kaur, appellant, unlocked the door, giving chance to her husband, Lakhwinder Singh, appellant, to flee from the place. The complainant returned to her house and disclosed this incident to her father. Thereafter, her father had taken her to Amir Singh, Ex.Sarpanch, which led to lodging of the report and the FIR. The complainant was also subjected to medical examination by PW1 Dr.Shashi Sawant at Civil Hospital, Dasuya. He found an elliptical imprint abrasion of about 3 cm diameter on her left cheek and another imprint abrasion of about 2 cm in length on her right cheek. She, however, did not find any evidence of any external marks of injury on examination of genitalia. On the basis of the allegations, both the appellants were charged for an offence under Sections 366 and 506 IPC. Appellant Lakhwinder Singh was, in addition, charged with Section 354 read with Section 109 IPC.

Both the appellants pleaded not guilty and claimed trial. Appellant Jasbir Kaur put on record her counter version. As per her, altercation had ensued between her and complainant Manjit Kaur while she was passing in front of the shop and complainant had spoken ill of her. This led to grappling between appellant Jasbir Kaur and the complainant where they had scratched each other with nails. As per appellant Jasbir Kaur, she had given tooth bites to the complainant. She further stated that both were separated by her

husband, appellant Lakhwinder Singh. She also pleaded false implication on the ground that this has been done at the instance of Amir Singh, Ex.Sarpanch, as the appellant had opposed him during election and that is how this false case was registered against them. Similar version is given by appellant Lakhwinder Singh.

Ms.Baljit Mann, learned counsel appearing for the appellants, would submit that the story projected by the prosecution is highly improbable and is not worthy of belief, especially so when it is not supported by any independent witness. The counsel further submits that it is difficult to believe that two ladies could drag the complainant in the street full of people without attracting the passer-byes. The counsel would further say that theory of threat by two ladies to Balwinder Singh and Gurmit Kaur, who tried to intervene is certainly far fetched and appears to be made up. She has also pointed out that both the appellants were married a few days ago and in this background the allegation that appellant Jasbir Kaur would drag the complainant to lock her into a bed room with her newly married husband sounds unacceptable. Counsel, as such, would contend that it is unsafe to rely upon the testimony of complainant, Manjit Kaur.

Counsel appearing for the State and the complainant, however, would refer to the evidence of Balwinder Singh and the doctor to say that the prosecution had succeeded in proving its case by reliable evidence, which is sufficient to base conviction and pray for dismissal of appeal.

It is noticed that the incident, as such, had not been denied by the defence. Reference to the stand of the defence has

already been made above. As per the case of prosecution, the complainant was dragged and then misbehaved with by appellant, Lakhwinder Singh. On the other hand, the defence has made this to be a case of fight between appellant Jasbir Kaur and complainant Manjit Kaur in the street where they both were separated by appellant Lakhwinder Singh. Thus, the incident is conceded by the parties. Even if appellant Jasbir Kaur and complainant had indulged in altercation, it is not worthy of belief that the appellants would bite the cheek of the complainant. This stand apparently is introduced to explain the injury on the cheek of the complainant. The version of the complainant, Manjit Kaur, is supported by the evidence of PW6 Balwinder Singh and the medical evidence. PW6 had seen the complainant being dragged to their house by the appellants. PW-6 stated to have also seen appellant, Lakhwinder Singh, leaving from the back door when the door of the bed room was opened. The complainant was subjected to medical examination. The doctor has given clear evidence that there was an elliptical imprint abrasion of about 3 cm diameter on left cheek and that in the centre of elliptical abrasion, there was an abrasion of about 2 cm. in length, red in colour. A imprint abrasion of about 2 cm in length was also found present on the right cheek. PW1 also opined that injuries appeared to be that of teeth bite. He also denied the suggestion of defence that the injuries on the cheek were with the nails and not that of tooth bites. Learned counsel for the appellants though had argued that word `*imprint'* in the MLR was added subsequently at the instance of the police but this suggestion was denied by PW-1. It can, thus, be said that the testimony of complainant, Manjit Kaur, is supported by

medical evidence, which is independent in nature and also a witness, who gave an eye witness account. It cannot, thus, be said that it is a case, which is supported only by the evidence of the complainant.

The counsel for the appellant highlighted the fact that eye witness Gurmit Kaur was not examined by prosecution. This is not of much significance as one eye witness was so examined by prosecution. The submission by the counsel that her husband was examined as DW1 to say that Gurmit Kaur was not present at the scene of incident, would be hear-say and such can not be given much credence. Such evidence could have been given only by Gurmit Kaur and not by her husband. She was not produced in this regard to deny her presence.

Prosecution in this case has succeeded in proving the charges against the appellants. The theory of false implication due to the complainant having supported the loosing candidate, Amir Singh, is too far-fetched. There is nothing on record to say that Amir Singh was in any manner seriously related to the complainant or that winning candidate was either related or close to the appellants, for which they could have been falsely implicated.

Counsel for revision petitioner has pleaded for enhancement of the sentence awarded to the appellants. On the other hand, counsel for the appellants would plead that the appellants have suffered enough for this prolonged prosecution. The incident is of 1994 and the appellants were convicted on 2.5.1995. Since then, their appeal is pending. Appellant Jasbir Kaur was a newly married at the time of incident and both were of a young age of 22 years. The counsel would also submit that though technically, the

prosecution may have succeeded in proving the offence under Section 366 IPC, yet the motive may not be so, as alleged, when viewed in the background that both the appellants were married few days prior to the incident and under such circumstances, it would be hard to accept that newly married wife would abet her husband for outraging the modesty of a girl. As per the counsel, this case, at the most, would appear to be a case of altercation, leading to dragging etc. due to the fact that brother of the complainant used to tease sister of appellant, Lakhwinder Singh. The counsel would appear justify in submitting that the main allegation of abduction is against appellant, Jasbir Kaur, who, after conviction, was ordered to be released on probation. Appellant Lakhwinder Singh, however, was harshly treated and sentenced to suffer 4 years RI, though he was alleged to have abated the offence of abduction. It is worth consideration if the abettor could be so punished while the main preparator is ordered to be released on probation. It appears that the appellants have suffered enough. At this belated stage, no case for enhancing the sentence of appellant Jasbir Kaur is made out. If order releasing her on probation is to stand, then it may not be proper to sentence her husband differently.

Accordingly, while maintaining the conviction and sentence of both the appellants, it is directed that both the appellants be released on probation for a good conduct instead of sentencing them and they be directed to enter into a bond with one surety to appear and receive the sentence when called upon during the period of three years for the purpose in question. The necessary bond shall be executed before the Chief Judicial Magistrate,

Hoshiarpur, within one month of this order.

With this modification in the sentence, the appeal is dismissed.

Since, no ground for enhancement of sentence of the appellants is made out, the revision petition is also dismissed.

**March 09, 2007** **( RANJIT SINGH )**
**khurmi** **JUDGE**